

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.Rev.Pet.No. 2918 of 2003

CRA 56/2002 of ADDITIONAL DISTRICT COURT (ADHOC), THRISSUR
CC 313/1999 of J.M.F.C.-I,THRISSUR

REVISION PETITIONER(S):

MAJEED S/O PALLIKKAL PADIVEETIL SAIDU MUHAMMED,
PO, PANNIANKARA, CHOORAKUNNU, LAKSHAM VEEDU,
MANNAMBRA VILLAGE

BY ADVS.SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL

RESPONDENT(S):

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SMT BINDU GOPINATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN.V. J

Crl.R.P.2918 of 2003

Dated 12th August, 2015

ORDER

1. The Revision Petition is preferred by the accused in C.C.No.313 of 1999 on the file of the Judicial Magistrate of First Class-I, Thrissur challenging the concurrent verdicts of conviction passed against him for an offense under sec. 379 of the IPC.

2. In the night of 29.10.1999, three copper vessels were stolen from the house of PW1 bearing Door No.XI/2 of Vilvattom panchayath. On 31.10.1999 at 9.00 am, Exhibit P1 written complaint was submitted by PW 1 with the Viyyur police based on which Exhibit P 3 FIR was registered u/s 379 of the IPC.

3. On 1.11.1999 at 2 am, the petitioner was spotted by PW 6 , SI of Police Mannuthi and his party with a sack near Nallenkara centre. On closer examination some vessels were found inside the sack and as the petitioner could not account for its possession, suspecting that the same to be stolen, the same were seized as per Exhibit P 4 seizure mahazer. On the basis of the aforesaid seizure, crime No.304 of 1999 was registered against the petitioner u/s 41(1)(d) and sec. 102 of the Cr.P.C.

4. Later, it was revealed that the items seized from the possession of the petitioner as per Ext.P4 seizure in crime No.304 of 1999 were the items stolen from the premises of PW1. The same was duly identified and after investigation final report was laid before the Court.

5. With a view to connect the revision petitioner with the crime alleged, prosecution examined as many as six witnesses. The documentary evidence exhibited by prosecution was Exts. P1 to P6. The Material objects produced were M. Os. 1 to 5.

6. On a consideration of the evidence led by the prosecution in support of its case, the learned Magistrate came to the conclusion that the prosecution succeeded in establishing the guilt of the accused and convicted him for the aforesaid offence.

7. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

8. The learned counsel for the petitioner at the

outset itself submitted that the prosecution has not let in any evidence so as to connect the petitioner with the stolen articles which was allegedly seized as per Ext.P4 seizure mahazar dated 1.11.999. The absence of proper identification of the stolen articles by PW1 was portrayed as a material circumstance to doubt the prosecution version. It was pointed out that in Ext.P1 complaint preferred by PW1, he has only mentioned about three copper vessels but after the alleged seizure, he has incorporated additional items as well, which would raise suspicion in the prosecution version. More over, in Ext.P1, PW1 had specifically stated about the inscription "Parukutty Amma" in the vessels. No such inscription was there in the items seized. According to the learned counsel, the prosecution has not let in any evidence to conclusively establish that MO1 allegedly seized by PW6 on 1.11.1999 were the items which were

stolen from the shed of PW1. This according to the learned counsel is fatal and will create doubt in the prosecution case. It was further pointed out that the evidence of PW1 cannot be relied on to conclusively establish that MO1 series of items were in fact stolen from his shed and further the evidence of the police officers also was far from satisfactory.

9. Per contra, the learned Public Prosecutor has submitted that the petitioner is having criminal antecedents and proper explanation has been given by PW1 with regard to the absence of the name "Parukutty Amma" in MO1 to 3. The seized materials were flattened by the accused and that was the reason for the failure of PW1 to specifically point out that the seized items had in fact belonged to him. It was further pointed out that both the Courts below have concurrently entered on a finding of conviction

based on the facts and sitting in revision, this Court will not be justified in interfering with the same. I have anxiously considered the rival contentions.

10. The question that is to be considered is whether the concurrent findings recorded by the courts below regarding the involvement of the revision petitioner in the alleged commission of the crime is liable to be interfered with exercising revisional powers of this Court.

11. Ext.P1 complaint was preferred by PW1 on 31.10.1999 at 9.00 am. In Ext.P1 his specific case is that three vessels were stolen from his house No.II in Ward No. 11 of Santhi nagar in Vilvattom village on 29.10.1999 at night. Apparently complaint was preferred on the 2nd day of the commission of the theft. In Ext.P1 complaint he has specifically stated

that in two of the vessels which were stolen the name "Parukutty Amma" is inscribed. It was based on Ext.P1 that crime No.300 of 1999 was registered on 31.10.1999. It is borne out from the evidence of PW6. Sub inspector of police, Mannuthy police station, that on 1.11.1999 at 2.15 am, the petitioner was found in a doubtful and suspicious circumstance possessing MO1 to 5 articles. When explanation was sought, the same was not satisfactory and it was thereafter, that PW6 had arrested the petitioner at 2.15 am and Ext.P4 seizure mahazar was prepared. It was thereafter, that crime No.304 of 1999 was registered u/s 41(1)(d) and s.102 of the Cr.P.C. The Court has concluded that MO1 to 5 articles which were seized at 2.15 am on 1.11.1999 from the possession of the petitioner are in fact the items which were stolen from the shed of PW1 on 29.10.1999. The essence of the contention raised by

the learned counsel is that the prosecution has failed to prove the identity of the articles which were seized as the one which was allegedly stolen from the house of PW1. In order to bring out this particular aspect, the learned counsel relied on the assertion of PW1 in his complaint that the copper vessels which were stolen from his house contained inscription as "Parukutty Amma". For reasons best known to the prosecution, they have not produced any evidence to show that there was any sort of inscription in the vessels which were seized from the possession of the petitioner. Further more, certain other items were also seized from the possession of the petitioner on 1.11.1999 but no reference was made by PW1 in respect of these items when he had originally given complaint as Ext.P1. When the evidence let in by the prosecution is appreciated, it can be seen that the Investigating Officer had stated

that he had not heard the explanation that was given by the accused when he was arrested. He admits that some explanation was given but he is unaware as to what the explanation was. Insofar as the identity of the materials is concerned, PW1 emphatically says that since the vessels were flattened he was not able to find out as to whether the seized items contained the inscription. I am of the considered view that the prosecution cannot succeed in a case of this nature on the strength of the above evidence. Both the Courts below have based its finding exclusively on s.114(a) on the ground that the stolen articles were recovered from the possession of the petitioner. Whether a presumption u/s 114 illustration (a) of the Evidence Act should be drawn in a given situation is a matter which depends on the evidence and the circumstances of the cases. The nature of the stolen

articles, the nature of its identification by the owner, the place and the circumstances of its recovery, the intervening period between the date of occurrence and the date of recovery, the explanation of the persons concerned from whom the recovery is made are all factors which are to be taken into consideration in arriving at a decision. (See Devender v. State of Tamil Nadu 1997 (11) SCC 720).

12. The burden to prove that the properties seized from the accused is stolen property lies on the prosecution. Only after this burden is discharged can the accused be asked to explain his possession of the seized articles. When there is no conclusive proof as to the identity of the stolen articles as the one which were stolen from the shed of PW1, it cannot be said that the presumption will come into play.

13. There is another aspect of the matter. According to PW 1, the theft was committed in the night of 29.10.1999. Ext.P3 FIR registered on the strength of Ext. P1 reaches court only on 1.11.1999 at 10.30 PM. Exhibit P 5 crime registered after the seizure of MO's 1 to 5 also reaches the court on exactly the same day and at the same time. According to the learned counsel, this aspect would reveal that the crime based on Ext.P1 complaint was registered only after the arrest of the petitioner pursuant to Exhibit P 5 crime. As rightly contented by the learned counsel, it is inconceivable as to why the petitioner was carrying those flattened stolen articles in the dead of night on 1.11.1999 , that is on the fourth day of the crime. This would also raise some suspicion in the case of the prosecution .

14. In view of above, I am of the considered view that the benefit of doubt is to be extended to the petitioner.

15. The revision petition is allowed and the conviction and sentence passed against the petitioner is set aside. The petitioner is set at liberty.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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P.S.To Judge